

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at ___ O'clock & ___ min. ___ M
SEP 12 2003
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (33)

IN RE:

ENTERED

C/A No. 01-09345-W

Rosetta M. Davis,

SEP 02 2003

ORDER

KPD Debtor.

Chapter 7

THIS MATTER came before the Court upon the Debtor's Motion to Redeem at zero a lawn mower from W.S. Badcock ("Badcock"). A hearing was held from which the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Rosetta M. Davis ("Debtor") filed for bankruptcy relief under Chapter 13 on September 6, 2001 and her Chapter 13 Plan and Related Motions filed on November 9, 2001 (the "Plan") was confirmed on December 21, 2001. The Plan provided for the claim of Badcock, from which she had purchased a push lawn mower. According to the Plan, the secured portion of Badcock's claim was set at \$300.00 and the unsecured portion (or split claim) was \$89.99.
2. On May 14, 2003, the Debtor converted her case to Chapter 7. She had become disabled to the point that she could no longer work, her financial condition had deteriorated such that she had to surrender her house and van to their respective lienholders and she could no longer afford her Plan payments.
3. By the time the case was converted, all of Badcock's secured claim had been paid and \$45.05 of the \$89.99 unsecured portion had also been paid.
4. Notwithstanding these facts, upon conversion, Badcock sent a request for reaffirmation of a purported balance of \$137.35. Absent reaffirmation, Badcock threatened to repossess the lawn mower if the Debtor did not pay the remaining balance.

5. Badcock's threatened action prompted the Debtor's Motion to Redeem the lawn mower at a zero balance because Badcock's secured claim had been paid in full through the Debtor's Chapter 13 Plan. If granted, the Motion would eliminate Badcock's lien on the lawn mower.
6. After notice, Badcock did not object to Debtor's Motion to Redeem.

CONCLUSIONS OF LAW

The efficacy of the Debtor's Motion to Redeem at zero requires an analysis of both Bankruptcy Code §§ 722 and 348. Section 722 allows a debtor to redeem tangible personal property that is used primarily for personal, family or household use and that has either been exempted or abandoned by the Trustee. When redeeming, the Debtor must pay the lienholder the amount of its allowed secured claim.

Prior to passage of the Bankruptcy Reform Act of 1994, a split of authority existed as to the degree to which a debtor who had converted from Chapter 13 could avail herself of § 722 redemption rights and whether valuation of the amount of the allowed secured claim remained the same upon conversion to Chapter 7. See In re Archie, 240 B.R. 425, 428 (Bankr. S.D. Ala. 1999) (citing cases). Pre-1994 Reform Act cases such as In re Cooke, 169 B.R. 662 (Bankr. W.D. Mo 1994) and In re Stoddard, 167 B.R. 98 (Bankr. S.D. Ohio 1994), upheld a Chapter 7 debtor's right in a converted case to redeem only whatever portion of a creditor's allowed secured claim remained unpaid upon conversion. Therefore if, as in the Cooke and Stoddard cases, the debtor has actually paid in full the allowed secured claim of the creditor prior to conversion, the debtor has no requirement to make any additional payment and the creditor retains no lien on the collateral.

The views espoused in Cooke and Stoddard were further reinforced by the 1994 enactment of Subsection (f) to § 348 of the Bankruptcy Code. In particular, § 348(f)(1)(B) states that valuation

of property established in a Chapter 13 case remain effective when the case is converted. Moreover, § 348(f)(1)(B) requires allowed secured claims to be reduced to the extent they have been paid under the Chapter 13 Plan.

More recent case law has applied the principles set forth in the Cooke and Stoddard cases and § 348(f)(1)(B). In In re Archie, 240 B.R. 425 (Bankr. S.D. Ala. 1999), Chapter 7 debtors who had converted their case from Chapter 13 to Chapter 7 were allowed to redeem their vehicle for \$0.00 because they had paid the entire secured portion of the creditor's claim through their Chapter 13 Plan. The Court held that the valuation established in the Chapter 13 case governed the valuation of claims and thus the amount of the creditor's allowed secured claim in the converted Chapter 7 case. The Court further held that the amount needed to redeem an allowed secured claim in Chapter 7 shall be reduced by the amount already paid on the claim during the Chapter 13 case. In responding to the creditor's concern that this ruling would in essence allow the debtors to redeem collateral through installments, the Archie Court answered that any other holding would amount to a double recovery for the creditor. If the debtors cannot rely on the fact that the payments made through their Chapter 13 plan will be credited toward a later Chapter 7 redemption, the creditor stands to gain much more than it would have had the debtors initially filed a Chapter 7 case.

Similar facts were present in In re Hawkins, No. 96-1242, 2000 WL 33673761 (Bankr. M.D.N.C. Aug 30, 2000) and the Court agreed with the Archie Court. The Chapter 7 debtors were allowed to redeem their 1991 van for \$0.00 because prior to the conversion of their case from Chapter 13, all of the allowed secured claim of the creditor had been paid in full. Merely because a portion of the remaining unsecured claim of that creditor had not been paid through the debtors' plan did not provide an exception to redemption.

In the case at hand, the Debtor seeks to redeem at zero the secured claim of Badcock in order to release the lien Badcock continues to assert after conversion on a household good eligible for redemption. The Debtor had paid all of the allowed secured claim of Badcock according to her Chapter 13 Plan and had also paid a portion of the unsecured claim. In light of the persuasive legal authority set forth above, this Court finds in favor of the Debtor and allows her to redeem at zero the collateral under lien to Badcock and therefore retain the collateral without further payment to Badcock and requires Badcock to satisfy or cancel its lien upon entry of this Order.¹

AND IT IS SO ORDERED.

Columbia, South Carolina,
September 2, 2003.


UNITED STATES BANKRUPTCY JUDGE

¹ The Court suggests that alternative procedures, such as an objection to claim or a motion to compel satisfaction or cancellation of lien, may be more logical procedures to address similar situations.